

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI
WRIT PETITION No.4756 of 2023

ORDER: (*per Hon'ble Sri Justice P.SAM KOSHY*)

The instant writ petition has been filed seeking following relief:

“...to pass an order or direction or any other proceedings one in the nature of Writ of Mandamus declaring the action of Respondents mandamus declaring the Notice dated 02-12-2022 issued by Respondent No.3 blocking the account and ITC amount sum of Rs.34,99,550/- as State Goods and Services Tax (SGST) and Rs.34,99,550/- as Central Goods and Services Tax (CGST) as being illegal, without jurisdiction, unenforceable and contrary to the provisions of the Constitution of India and the Central Goods and Services Tax Act, 2017, and consequently set aside the same to be invalid...”

2. Heard Dr S.V. Rama Krishna, learned Senior Counsel on behalf of Sri S.V. Vanshi Krishna, learned counsel for the petitioner, Ms. Bokaro Sapna Reddy, learned counsel for respondent No.2, Mr. Dominic Fernandes, learned Senior Standing Counsel for CBIC appearing for respondent No.3 and learned Special Standing Counsel for Commercial Taxes appearing for the respondent No.5.

3. The categorical stand taken by the petitioner in the writ petition is that the action of blocking ITC account of the petitioner by the respondents was in contravention to Rule 86A of CGST Rules, 2017, (for short 'the Rules'). According to the petitioner, the respondents have not complied with the statutory requirements under the CGST Act,

2017 and rules framed therein so far as steps necessary to be initiated prior to blocking of electronic credit ledger under the Rules.

4. According to the learned counsel for the petitioner, the impugned order suffers from various lacunas inasmuch as the impugned order is a non-speaking order without assigning any reasons to the assessee for initiation of proceedings under rule 86A. It is submitted that the petitioner had replied to the notice issued by the authorities concerned submitting all the relevant documents including the purchase and sales ledger along with weighment bills from the buyers to whom the sales were made so as to establish that theirs was not a non-existing dealer, but was related to genuine physical transactions of sale and purchase. The authorities concerned have not considered the aforesaid documents, sales ledger and weighment bills produced by the petitioner and have simply blocked availing of ITC declaring that the entire transactions made by the petitioner was a bogus transaction dealing with non-existing companies.

5. According to the learned counsel for the petitioner, the said action of blocking credit ledger by the respondents without giving any prior show cause notice in this regard, hence is bad in law. It was also the submitted that because of the said blockage, the petitioner is suffering heavily.

6. On the contrary, learned counsel for the State/respondent Nos.3 to 5 contended that the petitioner had fraudulently availed ITC inasmuch as it had provided invoices from different companies which upon verification were found to be non-existing entities. According to the learned counsel for the State, they had received an intimation from the respondent Nos.1 and 2 in respect of the large scale discrepancies were such fraudulent ITC were availed by the petitioner and similarly placed large number of other companies by appropriating fake invoices from non-existing companies, availed the benefit of ITC. It was in this context that the ITC account of the petitioner was required to be blocked.

7. Having heard the contentions put forth on either side and on perusal of records, what is necessary at this juncture to consider is the contents of Annexure-P2 dated 02.12.2022 whereby fraudulent availment of ITC from various dealers was intimated to the petitioner and the petitioner was called upon to explain the reasons for availment of such invalid ITC.

8. A plain reading of the said notice dated 02.12.2022 would clearly reveal that, the said notice being a notice so far as blocking of the electronic credit ledger of the petitioner under Section 86A of the CGST Act. There was also no mention of the same being an intimation in respect of proceedings drawn under Section 74 of the Telangana State (TS) GST Act, 2017.

9. Skipping of the details mentioned in Annexure-P2, it would be relevant to mention the contents of the impugned notice which for ready reference are reproduced herein under:

“This is to inform you that during the investigation the certain dealer has availed ITC without receiving the goods against invoices from following dealers from following dealers from 2017-18 to 2021-22.

The Ace India, GSTIN :36AAGFA9373E1ZD is here by informed that, during investigation of certain dealers as mentioned below, it is prove that those firms are bogus firms (Annexure attached).

Hence this office is here by blocking the ITC received from those firms against the fake invoice received is as follows.

SL.No	TRADE NAME	GSTIN	SGST	CGST
1	M/S.BHAGAWATI TRADING	36DCTPS3393L1ZJ	5,27,915	5,27,915
2	M/S.GALAXY TRADING	36BRNPM1477Q1ZV	13,35,023	13,35,023
3	M/S.FAMOUS ENTERPRISES	36DOSPS8889Q1Z2	8,97,864	8,97,864
4	M/S.RAINBOW ENTERPRISES	36JWRPS9348B1ZO	7,38,748	7,38,748
		TOTAL	34,99,550	34,99,550

Thus you are liable to pay the tax dues of **Rs.34,99,550/- (Rupees thirty four Lakhs Ninety nine Thousand and Five hundred and Fifty only) under SGST and Rs.34,99,550/- under CGST** on availing ITC from fraudulent dealers as mentioned above.

You are hereby direction to explain the reasons for the availment of invalid ITC by 09/12/2022. If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in this matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.”

In the process, the ITC account of the petitioner was also blocked with no other intimation.

10. Now if we look into the contents of Rule 86A, the same reads as under:

“Rule 86A. Conditions of use of amount available in electronic credit ledger.-

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36

i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

ii. without receipt of goods or services or both;
or

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."

11. Today during the course of hearing, learned counsel for the State produced a letter dated 04.11.2023 which was in fact a show cause notice and assessment under Section 74 of the Act in respect of certain alleged invalid availing of ITC. From plain reading of the contents of letter dated 04.11.2023, it would make it evident that the notice dated 04.11.2023 or for that matter 02.12.2022 are not under Section 74 of the Act. The fact that the impugned notice (Annexure P2) called upon the petitioner to submit his explanation as would be evident from Annexure P2 would also go to establish that it was not an order of attachment of ITC account of the petitioner. If the letter dated 02.12.2022 is neither an order under Section 86A, nor an order under Section 74 of the Act, in these factual circumstances, it is difficult to sustain the said letter dated 02.12.2022. If at all the same is the notice or the order of blocking the ITC account of the petitioner, the same is clearly in contravention to the statutory provisions governing the field of blocking of availing of ITC.

12. Given the said facts and circumstances of the case, the impugned notice dated 02.12.2022 therefore being in contravention to the provisions of CGST and TSGST Acts are concerned, the same deserves

to be and are accordingly set aside. Since the said order is being set aside on the technicalities of the same being in contravention to the statute, the right of the learned counsel for the State/respondent Nos.3 to 5 to take appropriate steps in accordance with law so far as the alleged invalid availment of ITC is concerned stands reserved.

13. The writ petition therefore to the aforesaid extent stands allowed with consequential benefits. No order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

P. SAM KOSHY, J

N.TUKARAMJI, J

Date: 06.11.2023
GSD